

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 9393
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the Department's denial of General Assistance to provide her housing.

FINDINGS OF FACT

1. The petitioner is a thirty-nine-year-old unemployed woman who can read and write, has a General Education Diploma and a job history as an unskilled laborer. The petitioner has not worked since 1975 due to what she refers to as multiple health problems, although she presented no evidence that she is not able to work. She lives in a downtown Brattleboro apartment owned by her aunt for which she pays no rent. She buys her food with Food Stamp coupons, using the change she receives to pay her utilities. She has no history of recent hospitalization for any reason, is not being treated for drug or alcohol abuse and has no minor dependents.

2. On September 11, 1989, the petitioner applied at the Department of Social Welfare office in person for General Assistance to find other housing. Her need was based on the fact that her aunt had asked her to move out of her apartment and her uncle had thereafter locked her out of the apartment.

She had succeeded in gaining reentry through the intervention of the police department.

3. The Department denied her request for assistance based on her failure to prove that she has an emergency need and the fact that she is "able-bodied", has "no minor dependents", and does "not have two employment barriers."

4. Between the date of her denial on September 11 and her hearing on September 22, 1989, her uncle, whom the petitioner described as an alcoholic, returned and removed her mailbox and cut off her cable TV. On September 19, 1989, the police issued a trespass warning to her uncle and since that time he has not returned to her apartment. The petitioner continues to have access to her apartment, as well as heat, hot water, and electricity.

5. Although the police have been cooperative with her requests, the petitioner feels that she is being watched as she comes and goes from the apartment and that her uncle will continue to harass her. Subsequent to her G.A. Denial, she received a note from her aunt asking her to leave by November 15, 1989. No legal proceedings to evict her have been instituted. The petitioner seeks assistance in obtaining, paying for and moving to a new apartment.

6. The District Director, who is supervising the worker handling the petitioner's request, took the position at hearing that the events which occurred both prior and subsequent to the original denial do not constitute a

"catastrophic situation" justifying housing assistance at present. The District Director has been called by the petitioner's aunt who has indicated a willingness to discuss forbearance on the threatened eviction issue until January of 1990 when the petitioner will turn 40 and become eligible for assistance with monthly rent payments either at her present residence or elsewhere.

ORDER

The department's decision is affirmed.

REASONS

The petitioner seeks relocation into new housing because she believes her current housing situation is inadequate. The department's regulations provide that such relocation could occur as follows:

Catastrophic Situations

Any applicant who has exhausted all available income and resources and who has an emergency need caused by one of the following catastrophic situations may have that need which is indeed caused by the catastrophe met within General Assistance standards disregarding other eligibility criteria. Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is the result of failure on the part of the applicant to explore potential resolution of the problem:

. . . .

b. A court ordered or constructive eviction due to circumstances over which the applicant had no control. An eviction resulting from intentional, serious property damage caused by the applicant; repeated instances of raucous or illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional

and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to effort to correct substandard housing.

. . .

2602.1 Constructive Eviction Defined

Constructive eviction is defined as any disturbance caused by a landlord or someone acting on his behalf, which makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, must have as its intent the eviction of the occupant. No intent needs to be considered when heat or utilities or water are not provided within a reasonable period of time and there is an agreement to furnish these items.

In this matter, the petitioner has not proven either that she has a court ordered or constructive eviction. While her aunt and uncle clearly want her to leave the apartment, no legal steps have been taken to evict her. Certainly some steps, quite probably illegal, have been taken to hasten her departure but, at least until now, they do not meet the definition of constructive eviction because they have not rendered the apartment unfit for occupation. The petitioner continues to have access to her apartment and the benefits of heat, hot water and electricity, although she has had to enlist the assistance of the local police to guarantee their continuance. It cannot be found, that at this moment, the petitioner is without adequate housing. The petitioner is advised, however, that if the situation worsens, she should reapply and put the facts before the Department.

The petitioner's housing problems stem largely from the fact that she has no money to pay any rent. The petitioner does not dispute the fact that she lacks two barriers to employment which she needs for general GA eligibility which would pay monthly rent.<sup>1</sup> (Catastrophic programs disregard regular eligibility requirements.) The department agrees that in January when she turns forty, the two barrier requirement will be met. (The other being her lack of employment for 5 years.) The Department and the petitioner are urged in the meantime to work together to avoid her potential homelessness by continuing negotiations with her current and other potential landlords.

FOOTNOTES

<sup>1</sup>The regulations require that:

. . . .

B. Except as specifically provided in 2602 (catastrophic situation), General Assistance shall be granted to applicants who have no minor dependents included in their application only if they:

1. Are not able-bodied (see 2601 p.1) and meet the conditions of C (1-6) below, or
2. Are able-bodied, have two or more of the employment barriers as defined in 2607.1(c), and meet the conditions of C (1-6) below.

W.A.M. § 2600B

. . . .

c. Individuals who have two or more of the following employment barriers are exempted from the 20-hour job seeking requirement but remain subject to all other employment requirements in this section:

1. Age 40 or over;
  2. Eighth-grade education or less;
  3. Inability to read or write;
  4. Lives 10 or more miles from a town of 2500 or more and has no available transportation, and cannot reasonably be expected to relocate within 30 days;
  5. Has not for six consecutive months or more in the last five years been either employed by one employer or been a full-time student;
  6. Released within 6 months from a mental health institution or hospital unit;
  7. Participating in a state or federally funded drug or alcohol treatment program.
- W.A.M. § 2607.1(c).

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